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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,560	05/07/2001	Nichimu Inada	206253US3PC	1157

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EXAMINER

YU, JUSTINE ROMANG

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 04/17/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/830,560

Applicant(s)

INADA ET AL.

Examiner

Justine R Yu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 39-93 is/are pending in the application.
- 4a) Of the above claim(s) 44-47 and 52-93 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 39-43 and 48-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **DETAILED ACTION**

1. This office action is responsive to the amendment filed on 2/20/03. As directed by the amendment, claims 39-43 and 48-51 were amended, no claim was canceled nor was added.

Thus, claims 39-93 are presently pending in this application.

2. Claims 44-47 and 52-93 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 112***

3. Claims 39, 42, 48, and 49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 39, the term “wherein a position of a specific portion of the user with respect to the massaging apparatus is determined from a relation between a vertical position of the supporting arm and a pivotal position of the supporting arm” is indefinite and unclear as how and by what structural element being used to determine the recited relationship. Similar to claim 42,

### ***Claim Rejections - 35 USC § 102***

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 39-42 and 48-51 are rejected under 35 U.S.C. 102(a) as being anticipated by Canto (WO 98/57611).

Canto teaches a massaging device having a pair of supporting arms each pivotally supporting a therapeutic member (6, 15) (figures 1, 3, 4, 9). It is inherent that the position of a specific portion of the user with respect to the massaging apparatus can be determined from a relation between a vertical position of the supporting arm and a pivotal position of the supporting arm such that massaging therapy can be applied to the user.

Regarding claim 41, figure 1 of Canto shows a pivotal position-detecting sensor 17.

Regarding claims 48 and 49, Canto discloses the position of the specific portion of the user can be the shoulder of the user.

### *Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Canto in view of Imazaike et al (6,190,339).

Canto lacks a detail description that the sensor is an optical sensor. However, Imazaike teaches an optical sensor including light emitting and light receiving elements (column 16, lines 7-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute Canto's position sensor with an optical position sensor as taught by Imazaike, since it is a matter of design for art recognized equivalent.

### *Response to Arguments*

8. Applicant's arguments with respect to the 35 USC 112 (2) rejections have been fully considered but are not persuasive.

The applicant on page 7 of the remarks argues that the rejected clause is clear because the supporting arm always has a vertical position as well as a pivotal position along which a portion of the body (i.e., shoulder) of the user is established. The argument is not well taken because it is not clear how and by what structural element being used to determine the position of a specific portion of the body of the user with respect to the massaging apparatus, by a user or some thing else? Since the structure of the claim language cannot be determined, the claim language is unclear and indefinite.


9. Applicant's arguments, filed 2/20/03, with respect to the rejection(s) of claim(s) 39-43 and 48-51 under 35 USC 102(e) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, Canto's PCT (WO98/57611) still reads on the claims. The PCT reference has the same disclosure as in the Canto'917 reference and was published before the applicant's application. Thus, Canto's PCT is a proper prior art reference to this case.

*Conclusion*

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justine R Yu whose telephone number is (703)308-2675. The examiner can normally be reached on 8:30am - 6:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703)308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

  
Justine R Yu  
Primary Examiner  
Art Unit 3764

JY  
April 10, 2003